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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

COMMONWEALTH OF
MASSACHUSETTS, by its DIVISION OF
MARINE FISHERIES,

and,

STATE OF NEW HAMPSHIRE, by its
FISH & GAME DEPARTMENT,
DIVISION OF MARINE FISHERIES,

Plaintiffs,

V.

OTTO WOLFF, Acting Secretary of
Commerce, et al.,

Defendants.

Case No. 06-cv-12110 (EFH)

**FEDERAL DEFENDANTS' MOTION
TO ALTER OR AMEND THE
COURT'S ORDER**

Pursuant to Fed. R. Civ. Proc. 59(e), Federal Defendants^{1/} hereby move to alter or amend the Court's January 26, 2009 Memorandum and Order, Dkt. No. 38 ("Order"), with respect to remedy. Federal Defendants respectfully request that the Court vacate that portion of its Order providing that Framework 42 is temporarily suspended pending review of the mixed-stock exception by Federal Defendants. Order at 7. To the extent the suspension of Framework 42 is viewed as a preliminary injunction, it constitutes clear error because such relief is prohibited under the Manguson-Stevens Act, and the Court made no findings with respect to the factors necessary for demonstrating entitlement to a preliminary injunction. To the extent the suspension of Framework 42 is a permanent injunction, the Court erred in failing to consider the applicable standard for issuing a permanent injunction and in issuing an overly broad injunction that is not based on any evidence or justification as to its need or relationship to the issues raised in the litigation. Finally, by suspending the management measures in Framework 42, the Court's Order will result in significant disruption in the fishery likely to substantially undermine protection of groundfish stocks and cause economic harm to the fishing industry.

This motion is supported by the Memorandum in Support of Federal Defendants' Motion to Alter or Amend the Court's Order and in Support of Motion for Stay Pending Resolution of Motion, and the attached Declaration of Patricia Kurkul, filed herewith.

Pursuant to Local Rule 7.1(a)(2), the undersigned conferred with counsel for Plaintiffs about this motion and attempted in good faith to narrow or resolve the issues raised in this motion.

^{1/} Mr. Wolff, Acting Secretary of Commerce, is substituted for Carlos M. Gutierrez pursuant to Fed. R. Civ. P. 25(d)(1).

Dated: February 2, 2009

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (“NEF”) and paper copies will be sent to those indicated as non registered participants on February 2, 2009.

/s/ Kristen Byrnes Floom